Supreme Court, U.S.
FILED
AUG 25 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

No. 68-5009

DONALD FELIX SCHNEBLE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF FLORIDA

BRIEF FOR PETITIONER

PETITION FOR CERTIORARI FILED MARCH 13, 1969
CERTIORARI GRANTED JUNE 28, 1971

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IN THE SUPREME COURT OF THE UNITED STATES

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v.

STATE OF FLORIDA,

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ON WRIT OF CERTIORARI TO THE
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BRIEF FOR PETITIONER

JURISDICTIONAL STATEMENT

This cause is before the Court on the petition of Donald Felix Schneble to review the verdict of the Circuit Court of Walton County, Florida, and the judgment rendered thereon. Said verdict being entered on November 19, 1965, and the judgment entered on December 30, 1965. The verdict and judgment was appealed to the Florida Supreme Court on July 27, 1967, and a five to two decision affirmed the trial court judgment. The petitioner then field his motion

for a re-hearing which was subsequently denied on September 19, 1967. Petitioner as the co-defendant took a joint appeal for writ of certiorari in the United Supreme Court, said petition having been granted on June 10, 1968, and the cause was reversed and remanded to the Florida Supreme Court and further proceedings in light of *Bruton v. U.S.*, 391 U.S. 123 (1968). The Florida Supreme Court subsequently entered its decision on that opinion on November 13, 1968, in which the defendant, Snell was granted a new trial under law of the *Bruton* decision, and the petitioner's conviction was again affirmed by the Florida Court. From that decision petitioner filed a motion for a re-hearing in the Florida Supreme Court which was subsequently denied on March 13, 1969, the petitioner filed his petition for writ of certiorari in the United States Supreme Court which writ was granted June 29, 1971, allowing the cause to again come before the United States Supreme Court on the question of whether or not petitioner's conviction was in violation of the law as laid down in *Bruton v. United States*, 391 U.S. 123.

This cause is before the Court in accordance with jurisdiction conferred upon this Court by 28 U.S.C.A. Section 1257. The appeal is timely filed in accordance with the prevailing statutory and rules of the United States Supreme Court.

The question which the petitioner is requesting the United States Supreme Court to review his conviction and judgment is whether or not the trial court erred in allowing the joint trial of the defendant, Schneble and a co-defendant, Snell, allowing the statements of each to be used against the other.

STATEMENT OF THE CASE AND FACTS

Petitioner was the defendant below. Petitioner will be referred to as "petitioner" and the Appellee as "The State." In this brief the Record on Appeal will be symbolized by "R" and the Transcript of Jury Trial as "T."

The Petitioner was apprehended on July 14, 1965, at approximately 11:55 P.M., after having been stopped by Highway Patrol Trooper William J. Maddox. Upon ascertaining that the driver of the automobile, the co-defendant Snell, did not have a driver's license Trooper Maddox arrested Snell on the charge of no driver's license. Trooper Maddox also arrested the petitioner Schneble, for vagrancy. The Trooper stopped the car because of the right tail light not being lit. After he had both defendants in his patrol car he went to the car in which the defendants were traveling, in order to move the car off the road, and stated at that time he noticed "a bulge under a raincoat draped across the right front seat. He examined it and found it was a pistol, a .380 Llama pistol. The Trooper further testified that he asked the petitioner Schneble if he had a pistol and upon ascertaining that he did the Trooper said, "let's get it," and then ordered the petitioner to, "open your bag and get it out." (T-64) The defendants were then taken to a highway patrol station and interrogated until about 5 A.M. the following morning, after which time they were taken and confined in the Palm Beach County Jail where they were charged as above indicated.

Later that same day they were taken before Judge Hugh McMillian of the Criminal Court of Record where the petitioners entered pleas of guilty to no driver's license and vagrancy respectively. The petitioner, Schneble, entered a plea of guilty and was given credit for the time he had already served. (T-412 and 413) During the day of July 15th after blood stains were found in the car, and after Maxine Romona Collier, the alleged victim, was determined to be missing, arrangements were made by Detective Lt. Larry Yates of the Palm Beach County Sheriff's Office, to have the petitioner, Schneble's sentence set aside and a 15-day sentence at hard labor imposed. (T-186, 187 and 188) It is noted that all of this was done during the afternoon of July 16, 1965, after the petitioner, Schneble's sentence had expired at 5:00 A.M. earlier that same day.

At the time the petitioner, Schneble, was taken to Court in chains for the re-sentencing he requested the aid of an Attorney (T-193 and 194). This was corroborated by the Assistant Public Defender Gross, in his deposition (defendant's exhibit No. 2). The petitioner, Schneble, further testified that on Friday morning, July 17, 1965, he again requested an attorney, but was not given one. (T-193 and 195).

Those officers who questioned Schneble and were present in Court as witnesses for the State were extremely vague as to the amount of time Schneble was questioned. (T-185, 188 and 189). (T-242, 247 and 148). The petitioner, Schneble's memory was more exact in that he remembered being questioned night and day from the time he was picked up until several days and nights later, with the exception of Thursday and Friday night when he got to sleep in his cell. (T-191 and 192) (T-193, 194, 195, etc.). The testimony of both Detective Sgts. Haley and Herron and petitioner, Schneble, was to the effect he underwent a great deal of harrassment, fear and intimidation during the period he was being questioned. (T-125, etc.) (T-190, etc.) (T-230, etc.) (T-257, etc.) and (T-307, etc.)

At no time during the time the petitioner remained in Palm Beach County Jail were they taken before a Committing Magistrate on a charge of unlawful homicide, and in fact were not taken before a Magistrate until a warrant had been issued and the petitioner had been transported to the Walton County, Florida Jail, the warrant having been issued on July 23, 1965 some 10 days after the initial arrest.

The petitioner, Schneble, testified that he was promised leniency and although Detective Sgts. Haley and Herron denied this on direct examination, Haley made certain admissions on cross-examination which corroborated the defendant, Schneble's statement (T-247, 248) (T-390). Sgt. Haley further testified that the Chillingsworth murder case was a good example of what they were trying to convey to Schneble (T-346). The defendant, Schneble, was placed

in fear of his life and was the victim of a staged gangland type pursuit at high speeds along the back roads of Palm Beach County, was subjected to extreme physical exhaustion, mental fatigue, and constant terror for a period of 48 hours. (For a complete detailed description of this, note the cross-examination of Sgt. Haley commencing on T-325).

The petitioner was separately indicted by a grand jury for the Fall Term, 1965, Circuit Court of Walton County, Florida, and presented same in open Court on September 15, 1965, charging the petitioners with the crime of murder in the first degree. (R-1)

A motion to quash the indictment was made in open Court on September 20, 1965, on grounds of improper venue and further that the grand jury proceedings were not conducted according to law, the motion as directed to improper venue being denied at that time. (R-2). Hearing on the motion to quash as directed to the proceedings of the grand jury being unlawful was held on October 1, 1965, and denied by the Court at that time. A transcript of this hearing and a previous proceeding of September 14, 1965, whereby the Trial Judge and the District Attorney questioned several of the grand jurors is bound separately and made a part of the Record on Appeal herein.

At the hearing of October 1, 1965, the State made an oral motion to merge for trial the prosecution of the separately indicted alleged co-perpetrators of the same offense, (Page 21 of transcript of October 1, 1965 hearing), to which the petitioners objected. (Page 21 *supra*.)

On October 13, 1965, the Court entered an order granting said motion and consolidated the two prosecutions for trial (R-2).

The defendant was tried in the Circuit Court of Walton County, Florida on November 16th through November 19, 1965.

When the State rested its case the petitioners moved for a directed verdict of acquittal stating among other things as

their grounds the unlawful search and seizure of the alleged murder weapons from an automobile occupied by the petitioner, that the State had wholly failed to establish the corpus delicti of the murder prior to considiring the alleged admissions of Donald Felix Schneble, that the admission of the petitioner, Schneble, was obtained under obvious duress and mental fright, the State had completely failed to prove beyond a reasonable doubt without the admissions of petitioner, Schneble that the defendant, Snell, was a co-perpetrator of the crime of murder in the first degree, that the State failed to prove a premeditated design or a felony in connection with said murder in order to satisfy the requirements of a charge of first degree murder, that the State had failed to establish by a proponderance of evidence the venue necessary to have this case tried in Walton County, Florida, in that the indictment charging the petitioner specified Walton County, Florida, and was not lodged in the wording that said homicide took place during the trip and in a vehicle which passed through Walton County, Florida, and among other things, finally, that the State failed to produce competent relative evidence necessary to prove the essential elements of the crime of first degree murder against the petitioner. (T-531). Said motion was denied by the Court. (T-532). Petitioner herein offered no testimony in his behalf at the trial.

On November 19, 1965, the case was submitted to the jury after the argument of counsel and the charge of the Court. On that same day the jury returned a verdict of guilty against both defendants.

On November 30, 1965, the petitioner filed his motion for a new trial. (R-6 and 7). On December 3, 1965, in open Court the Court denied said motion, adjudged the defendant guilty as charged and sentenced him to the mandatory death penalty. (R-8).

On July 27, 1967, the Florida Supreme Court in a five to two decision affirmed the trial Court judgment. The petitioner then filed his motion for a re-hearing which was subsequently denied on September 19, 1967.

From this denial the petitioner filed a petition for writ of certiorari to the United States Supreme Court said writ having been granted on June 10, 1968. The Florida Supreme Court's decision was reversed and remanded for further proceedings in light of *Bruton v. U.S.*, 391 U.S. 123 (1968).

The Florida Supreme Court upon reconsideration reversed the decision as to the defendant, Snell, but again affirmed the trial Court as to the defendant, Schneble.

After denial of a motion for re-hearing by the Florida Supreme Court the petitioner again sought redress by petition for writ of certiorari in this Court on March 13, 1969.

ARGUMENT

This case is before the Court for further consideration as to whether the trial and conviction was in violation of the principal enumerated by this Court previously in the case of *George William Bruton v. United States*, 398 U.S. 123. In reviewing the opinion written in the *Bruton* case this writer could not help but be struck by the close parallel between the two cases. The backgrounds of the two cases were very similar in that in the *Bruton* case Bruton was tried in the lower Court with a co-defendant, Evans and they were both convicted largely on the statements made by the defendant, Evans. In a subsequent appeal to the Court of Appeals for the Eighth Circuit the Circuit Court of Appeals reversed the conviction as to Evans and affirmed the conviction as to Bruton. The reversal was based on the lack of voluntariness of the statement made the defendant, Evans.

When the Evans conviction was reversed and the statements of his were removed from the record there was nothing really left upon which the defendant, Bruton could have been convicted. The situation with regard to petitioner's case now under consideration by this Court is factually similar in that petitioner, Schneble, made statements against his own interest and he would more nearly fit into the position of Evans in this case.

However the defendant, Snell did make certain statements which were damaging both to himself and to the defendant, Schneble. His statements were made to the highway patrolman who made the initial arrest, said statements having been allowed into evidence by the trial judge and is sprinkled throughout the testimony of the highway patrolman, William J. Maddox in his testimony. (T-57 through 82). Additionally the FBI agent, Richard B. Kellogg, testifying before the jury, was allowed to state his conversation made with the defendant, Snell, which were recorded in the transcript. (T-395 through 400).

Agent Kellogg was followed to the witness stand by Lt. Larry Yates, the Palm Beach County Florida Sheriff's Department, whose testimony was primarily relating to the conversations with the defendant, Snell and Mr. Snell's statements to him. The pertinent statements made by the defendant, Snell, are found in the transcript. (T-407 through 409).

Although the statements of the defendant, Snell, were not as lengthy and as detailed as those of the petitioner herein, certainly they were damaging in that they were not subject to cross-examination and they were introduced primarily for the purpose of showing the inconsistencies that were made in the initial statements with statements that were later made. Certainly the two statements made by the co-defendants were introduced to corroborate each other, and had they not been introduced in effect against each other the defendant would have been cast in a much more favorable light before the jury becuase he would have gone to trial without a corroborating witness against him.

This further pointed out that without the corroborating statements of the co-defendant, Snell, the State of Florida would have been in a much worse position with regard to the proof of the corpus delicti, which the defendant, Schneble would have been entitled to the directed verdict because of the failure of the State to establish such a corpus delicti, had it not been for the corroborating statements of the defendant, Snell.

It is further argued that the gun taken from the automobile driven by the defendant, Snell, said gun having been the subject of a motion to suppress, was illegally obtained but the trial judge allowed the gun to go into evidence in the cause. This gun also constituted evidence against the defendant, Schneble, although it certainly had no connection whatsoever with the defendant, Schneble.

It is submitted that the holding of this Court in the case of *Chimel v. California*, 395 U.S. 752, the gun would not have been admissible even as to defendant, Snell, and certainly under the holding of this case in *Bruton* the evidence should not have been allowed as against the defendant, Schneble, the petitioner herein.

In the case of *Pointer v. Texas*, 380 U.S. 400, this Court stated, "That the right of cross-examination is included in the right of an accused in a criminal case to confront the witnesses against him." In the case of *Douglas v. Alabama* this Court said, "Although the Solicitor's reading of Loyd's alleged statement, and Loyd's refusals to answer, were not technically testimony, the Solicitor's reading may well have been the equivalent in the jury's mind of testimony that Loyd in fact made the statement; and Loyd's reliance upon the privilege created a situation in which the jury might improperly infer both that the statement had been made and that it was true." In each of these cases then this Court has taken the position that the right of confrontation of witnesses against the defendant's interest for the subject matter of cross-examination and the failure to be afforded this right is a denial of his Constitutional guarantees under the Sixth Amendment.

Certainly the State of Florida realized the value of trying these two defendants together and the effect of having the corroboration of one defendant's statement to be used against the other in that these two defendants were initially indicted separately by the Walton County, Florida grand jury but upon motion of the State Attorney for the merger of the two grand jury indictments for trial the motion was granted

and the defendants were jointly tried. This motion for a merger was vigorously contested by the defendants and the joint trial of the petitioner and a co-defendant was held despite and over the objection of the petitioner. The State obviously felt that without both defendants being on trial jointly that their case would be severely weakened against either of the defendants.

Rule 14 of the Federal Rules of Criminal Procedure authorizes a severance where it appears that a defendant might be prejudiced by a joint trial. Although the Federal Rules of Criminal Procedure is not controlling in the State's case, certainly they are worthy of consideration in determining whether a defendant's basic Constitutional rights have been violated in a State Court. Certainly common sense and reasoning would dictate that men and women in everyday affairs do not have the capacity to compartmentalize their brains so that they are able to consider evidence of one defendant only as against that defendant as evidence against another defendant only as to that defendant. This is asking men to do acts of mental gymnastics not possible by even the most intelligent people in the world. The conclusion reached in the *Bruton* decision was vigorously argued by the petitioner and his co-defendant in the appeal to the Florida Supreme Court prior to the holding of this Court in the *Bruton* case. This was done in spite of the fact that *Delli Paoli v. United States* was still the law at the time of the oral argument before the Florida Supreme Court. This argument was made to the Florida Supreme Court because the petitioner felt so strongly that the law with regard to typed testimony should be stricken from a joint trial.

The writer feels that the *Delli Paoli* decision was long past due for being overruled. It is felt however that this Court may not have arrived at the decision it did had it not been for the reversal in the lower Court of the co-defendant, Evans, on the basis of his inadmissible statements. It is felt that this Court would be remiss in its duty if it did not review the facts surrounding the circumstances of the state-

ments made by the petitioner in this cause which statements were used against him in the joint trial. Nowhere in the decisions that have been reviewed for the various appeals that have been taken in this cause was this writer able to find circumstances that were more flagrant violations of the defendant's right against self-incrimination than were present in the interrogation of the petitioner herein. Although the review of this case has been granted for examination in light of *Bruton* it is felt that the facts and law of the *Bruton* decision cannot be applied without taking a look at the overall circumstances leading up to the trial and conviction of this petitioner. Although the statements of the petitioner were introduced in the joint trial of he and his co-defendant by the petitions of the State's chief witnesses, Detectives Haley and Herron, the petitioner was continuously harrassed and interrogated for a period of 48 to 72 hours prior to making any damaging statements. The statement of the petitioner herein was tainted much worse than the statement of Evans in the *Bruton* case. The Court is therefore urged to examine the factual situations surrounding the statements made by the petitioner herein. Although this case presently under consideration was tried prior to the holdings of this Court in *Escobedo v. Illinois*, 378 U.S. 478, or *Miranda v. Arizona*, 384 U.S. 127 (1966), the rule applicable to the voluntariness of the petitioner's statement would fall far short of the requirements laid down in those two cases.

The Court is therefore urged to look at the totality of the circumstances with regard to the petitioner's trial and conviction. Petitioner urges the Court to consider the fact that although it is impossible to measure the damage that was done by allowing the statements of co-defendant, Snell, to evidence in their joint trial it was unquestionably a violation of his right of confrontation under the guaranties provided by the Sixth Amendment and therefore he should be granted a new trial so that the jury, which is the trier of the fact would be able to consider his case free from any unconstitutional evidence. Furthermore this Court should consider the nature of the statements of the petitioner as

the Court obviously did consider the statements of the co-defendant, Evans in the *Bruton* case in arriving at its decision in this cause.

CONCLUSION

For the reasons set forth herein the petitioner respectfully requests this Court will reverse the decision of the Florida Supreme Court and remand the cause to the Florida Supreme Court with instructions to set aside the conviction of the defendant and grant unto him a new trial.

Respectfully submitted,

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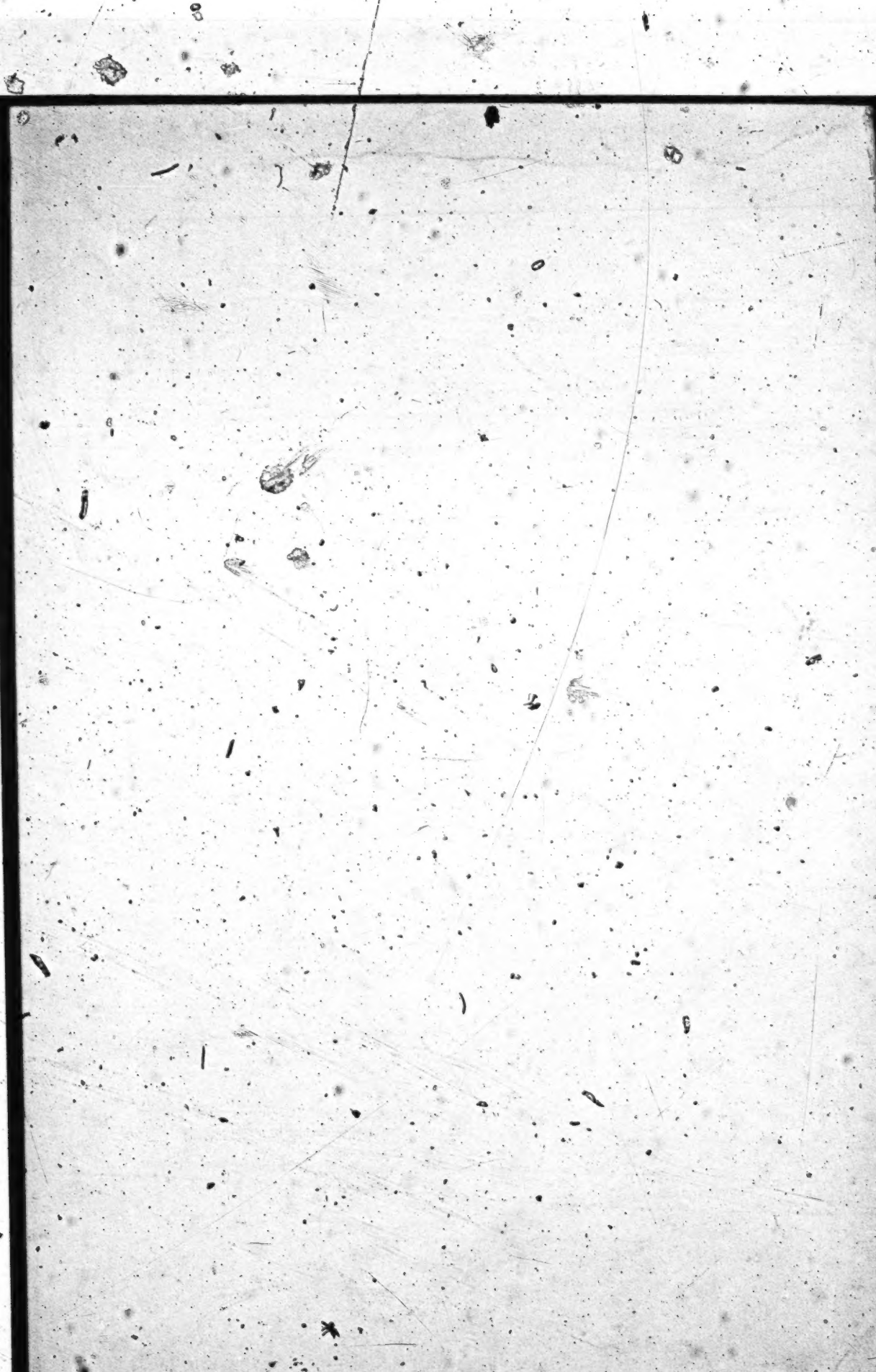

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NO. 68-5009

OCTOBER TERM, 1971

DONALD FELIX SCHNEBLE,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

BRIEF OF THE RESPONDENT

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NO. 68-5009

OCTOBER TERM, 1971

DONALD FELIX SCHNEBLE,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

BRIEF OF THE RESPONDENT

JURISDICTIONAL STATEMENT

Respondent accepts petitioner's jurisdictional statement as an accurate resume of those proceedings which gave rise to this Court's action granting certiorari limited to the question of whether petitioner's conviction was in violation of Bruton v. U.S., 391 U.S. 123, 20 L.ed.2d 476, 88 S.Ct. 1622.

STATEMENT OF THE CASE AND FACTS.

Petitioner's statement of the case and facts as the same appear in his brief defy an intelligent assessment in that they are embraced in a portion of the brief where they could never be said to belong. The alleged facts included therein are irrelevant to the only question posed by this Court's order. The alleged statement of facts constitutes an argument of the cause again on a matter not made the object of this Court's concern. Terminally, the statement of the facts is replete with conclusions which your respondent understands to be exclusively the province of this tribunal to reach.

Accordingly, nothing will be said about it except to observe that it is something which should be struck from the brief for its patent lack of either relevancy or materiality. This is so for the reason that if petitioner's position is found to be within the protective pale of Bruton v. U.S., 391 U.S. 123, 20 L.ed.2d 476, 88 S. Ct. 1622, then his statement of the case and facts is entirely superfluous. If this Court should decide that he does not place himself within Bruton's protection, then he could literally write until his arms fell off and he would fare no better.

ARGUMENT

We agree with petitioner's observation that there are areas of similarity as between his case and that of Bruton v. U.S., 391 U.S. 123, 20 L.ed.2d 476, 88 S. Ct. 1622. Indeed, we may extend the comparison even further and say that there are alarming similarities between petitioner's case, that of Bruton, supra, and that of Delli Paoli v. U.S., 389 U.S. 818, 19 L.ed.2d 70, 88 S.Ct. 126. The salient differences as between Bruton, supra, and Delli Paoli, supra, have their best articulation in this Court's opinion in Bruton, supra. That is to say, this Court found it no longer honest or intelligent to believe that a cautionary instruction separated the cast of guilt by a co-defendant's confession was possible.

In order for petitioner's case to fit within either Bruton, supra, without a judicial blessing or a cautionary instruction, or indeed, Delli Paoli, supra, with such a cautionary instruction, there would have to be (as to petitioner) a confessing co-defendant. It really does not require a great amount of imagination to conclude such is a rational conclusion.

If we still had Delli Paoli, supra, petitioner's case could not be controlled thereby inasmuch as there was no cautionary instruction about which the judiciary need be concerned. Since we no longer have Delli Paoli, supra, but now have

Bruton, supra, we must wonder at just how petitioner seeks to fit himself within its mold.

Calling the Court's attention to its several repeated pronouncements in Bruton, supra, as follows:

> This Court selected from its decision in Pointer v. Tex., 380 U.S. 400, 13 L.ed.2d 923, 85 S.Ct. 1065, that portion which said:
>
> "'that the right of cross-examination is included in the right of an accused in a criminal case to confront the witnesses against him'"
> 20 L.ed.2d 479
>
> and
>
> "'a major reason underlying the constitutional confrontation rule is to give a defendant charged with crime an opportunity to cross-examine the witnesses against him.'"
> 20 L.ed.2d 479, 480.

This Court again noted in Bruton, supra, that Evans' confession certainly added substantial and maybe even critical weight to the government's case in a form not subject to cross-examination by saying:

> "***Evans did not take the stand. Petitioner thus was denied his constitutional right of confrontation."
> 20 L.ed.2d 480.

There is added to the above this Court's further observation in Bruton, supra:

> "'A defendant may be prejudiced by the admission in evidence against a co-defendant of a statement or confession made by that co-defendant. This prejudice cannot be dispelled by cross-examination if the co-defendant does not take the stand.* * *'"
> 20 L.ed.2d 483,

and

> "* * *Such a context is presented here, where the powerfully incriminating extrajudicial statements of a codefendant, who stands accused side-by-side with the defendant, are deliberately spread before the jury in a joint trial. Not only are the incriminations devastating to the defendant but their credibility is inevitably suspect, a fact recognized when accomplices do take the stand and the jury is instructed to weigh their testimony carefully given the recognized motivation to shift blame onto others. The unreliability of such evidence is intolerably compounded when the

> alleged accomplice, as here, does not testify and cannot be tested by cross-examination. It was against such threats to a fair trial that the Confrontation Clause was directed. Pointer v. Texas, supra."

and to say nothing of:

> "* * * Here the introduction of Evans' confession posed a substantial threat to petitioner's right to confront the witnesses against him, and this is a hazard we cannot ignore.* * *"

Must it not follow, from the above, that if either of these two situations were to have existed in petitioner's trial (had there been a confession given by Snell and Snell not taken the witness stand), this Court would have summarily reversed based upon Bruton, supra, as brought forward by Roberts v. Russell, 392 U.S. 293, 20 L.ed.2d 1100, 88 S.Ct. 1921? That of course must be true because even the Florida Supreme Court, in reconsidering the matter on this Court's mandate found that Snell had suffered the fate condemned in Bruton, supra, as a result of Schneble's confession implicating him. Much has been said by petitioner in

terms of suggestions that Snell actually said a number of things which, given a very charitable, lenient interpretation might constitute a sufficient basis to justify relief under Bruton, supra. Nothing is further from the truth. Snell never implicated either himself or Schneble or anyone else in the killing or, for the matter of that, any other crime. The references made by petitioner to places in the record where this is alleged to have occurred simply do not bear him out in his contention. Respondent would be more than happy to have those portions of the testimony considered in their entirety by this Court. No thinking human could read that testimony and blithely conclude that, as does petitioner here, he now can secure relief therefrom.

Viewed in terms of criminal-smarts, it may be said that Snell either knew nothing or told nothing. It is an absolute certainty that no criminal complicity passed from Snell's lips to anyone so that it in turn could be said to have been used against Schneble. There having been none, it is a matter of absolutely no legal consequence whatsoever that he did not take the witness stand. The confrontation which is the common thread by means of which this Court wove its reversing web around Bruton, supra, simply does not exist in this case no matter who reads it or in what fashion. One cannot confront one who has not accused. You may not cross-examine one who has not been examined. You may not inquire into the bona fides of a confession which does not exist. In short, you may

not seek aid from Bruton when Bruton cannot provide you therewith.

We realize that with the situation being as tenuous as we contend it is, how tempting it must have been for petitioner to air the remainder of his alleged grievances in an attempt to secure favorable consideration from this Court in that his many references are to matters and legal principles far outside the scope of this Court's limiting inquiry of June 29, 1971. Respondent will not launder the matter in kind. To do so would be to cast upon the shoulders of this Court far more than it ever wished to consider.

Suffice it to say that when one considers the individual irrelevant complaints made by petitioner or one takes them in the aggregate, there is simply no way in which so measured they may fill the void which the clear record itself cannot do.

CONCLUSION

Accordingly, respondent respectfully suggests that this Court either deny certiorari as having been improvidently granted or, in the alternative, affirm

the action of the Florida Supreme Court for having met not only this Court's mandate in the cause but as well the clear principle announced in Bruton, supra, and its progeny.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General

GEORGE R. GEORGIEFF
Assistant Attorney General

Counsel for the Respondent.

PROOF OF SERVICE

This is to certify that I have served copies of the foregoing Brief of the Respondent on petitioner's counsel, the Honorable Clyde B. Wells, P. O. Box 669, DeFuniak Springs, Florida, by mail, this _____ day of September, 1971.

GEORGE R. GEORGIEFF
Assistant Attorney General

Of Counsel.

SCHNEBLE v. FLORIDA

CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 68-5009. Argued January 17-18, 1972.
Decided March 21, 1972.

Petitioner was found guilty of murder following a jury trial in which police officers testified as to the detailed confession that he had given to them and in which one officer related a statement made to him by petitioner's codefendant, who did not testify, which tended to undermine petitioner's initial (but later abandoned) version and to corroborate certain details of petitioner's confession. The Supreme Court of Florida affirmed. Petitioner claims that the admission into evidence of his codefendant's statement deprived him of his right to confrontation in violation of *Bruton* v. *United States*, 391 U. S. 123. *Held:* Any violation of *Bruton* that might have occurred was harmless beyond a reasonable doubt in view of the overwhelming evidence of petitioner's guilt as manifested by his confession, which completely comported with the objective evidence, and the comparatively insignificant effect of the codefendant's admission. Pp. 429-432.

215 So. 2d 611, affirmed.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, WHITE, BLACKMUN, and POWELL, JJ., joined. MARSHALL, J., filed a dissenting opinion in which DOUGLAS and BRENNAN, JJ., joined, *post*, p. 432.

Clyde B. Wells argued the cause and filed a brief for petitioner.

George R. Georgieff, Assistant Attorney General of Florida, argued the cause for respondent. With him on the brief was *Robert L. Shevin*, Attorney General.

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner Schneble and his codefendant Snell were tried jointly in a Florida state court for murder. At the trial neither defendant took the stand, but police

witnesses testified to certain admissions made by each defendant implicating both of them in the murder. Both defendants were convicted, and the Florida Supreme Court affirmed. This Court vacated and remanded the case for further consideration in the light of *Bruton* v. *United States*, 391 U. S. 123 (1968). *Schneble* v. *Florida*, 392 U. S. 298 (1968). Upon remand, the Supreme Court of Florida reversed Snell's conviction, finding that it had been obtained in violation of *Bruton*, but affirmed petitioner's conviction. We again granted certiorari, limited* to the question of whether petitioner's conviction had been obtained in violation of the *Bruton* rule. In the circumstances of this case, we find that any violation of *Bruton* that may have occurred at petitioner's trial was harmless beyond a reasonable doubt. We therefore affirm.

The State's case showed that a threesome consisting of petitioner, Snell, and the victim, Mrs. Maxine Collier, left New Orleans in a borrowed automobile en route to Florida. While they were traveling across the Florida Panhandle, Mrs. Collier was murdered, and her body placed in the trunk of the automobile. The body was then transported in the car to the environs of Tampa, where it was left behind some bushes in a trash dump. Petitioner and Snell then continued their odyssey southward to the Florida Keys, and thence north along the east coast of Florida. They were apprehended for unrelated offenses in West Palm Beach, but upon discovering blood in the trunk of the car police officers there

*The question of whether Schneble's sentence of death in this case violates the Eighth and Fourteenth Amendment proscription of "cruel and unusual punishment" is therefore not at issue here. That question is currently under consideration in *Aikens* v. *California*, No. 68-5027, and companion cases. All executions in Florida have been stayed by the Governor's executive order until July 1, 1973. See Fla. Exec. Order No. 72-8 (Feb. 21, 1972).

commenced the investigation that ultimately led to the charging of petitioner and Snell with the murder of Mrs. Collier.

The investigating officers testified at the trial that petitioner initially, while admitting knowledge of the murder, claimed that Snell had shot Mrs. Collier while petitioner was away from the car taking a walk. Petitioner later conceded, however, that his earlier story was false. He admitted to the police that it was he who had strangled Mrs. Collier, and that Snell had finally shot her in the head as she lay dying. The state court held these admissions of petitioner to be voluntary and admissible. Since our grant of certiorari here was limited to the *Bruton* issue, our treatment of that question assumes that these admissions were properly before the trial court.

One of the investigating officers also related at trial a statement made to him by Snell. Petitioner challenges this testimony as violative of *Bruton*, since Snell did not take the stand and thus was not available for cross-examination. According to the testimony of this officer, Snell said petitioner had occupied the rear seat of the car and had never left Snell alone in the car with Mrs. Collier during the trip. While Snell's statement fell far short of the type of comprehensive and detailed confession made by petitioner, it did tend to undermine petitioner's initial (but later abandoned) claim that he had left Snell alone during the time at which the murder occurred. Snell's statement also placed petitioner in the position in the car from which the victim could more easily have been strangled. Thus, petitioner claims, the introduction of Snell's out-of-court statement, not subject to effective cross-examination, deprived petitioner of his right of confrontation in violation of *Bruton*.

The Court held in *Bruton* that the admission of a confession of a codefendant who did not take the stand deprived the defendant of his rights under the Sixth

Amendment Confrontation Clause, when that confession implicated the defendant. Even when the jury is instructed to consider the confession only against the declarant, the Court in *Bruton* determined that the danger of misuse of the confession by the jury was too great to be constitutionally permissible. *Bruton* was held to be retroactive in *Roberts* v. *Russell*, 392 U. S. 293 (1968), and thus applies to the instant case even though it was tried more than two years prior to *Bruton*.

The mere finding of a violation of the *Bruton* rule in the course of the trial, however, does not automatically require reversal of the ensuing criminal conviction. In some cases the properly admitted evidence of guilt is so overwhelming, and the prejudicial effect of the codefendant's admission is so insignificant by comparison, that it is clear beyond a reasonable doubt that the improper use of the admission was harmless error.

In *Harrington* v. *California*, 395 U. S. 250 (1969), the defendant was tried for murder jointly with three others. As in the instant case, he admitted being at the scene of the crime, but denied complicity. One of his codefendants, who confessed and implicated him, took the stand and was subject to cross-examination. The other two codefendants, whose statements corroborated defendant's presence at the scene of the crime, did not take the stand. Noting the overwhelming evidence of Harrington's guilt, and the relatively insignificant prejudicial impact of these codefendants' statements, the Court held that any violation of *Bruton* that had occurred was harmless error.

In the instant case, petitioner's confession was minutely detailed and completely consistent with the objective evidence. He informed police of the precise location at which they ultimately located the body, and guided them to this out-of-the-way spot. Although petitioner initially tried to put the sole blame on Snell,

this version of the facts did not satisfactorily explain certain deep rope burns on petitioner's hands. When confronted with the fact of the rope burns, petitioner admitted that he and Snell had plotted to kill Mrs. Collier in order to steal her money and the automobile.

Petitioner confessed that he had strangled Mrs. Collier with a plastic cord, and recounted the commission of the crime in minute and grisly detail culminating in Snell's shooting the victim in the head because she still showed signs of life after the strangulation. These details of petitioner's later account of the offense were internally consistent, were corroborated by other objective evidence, and were not contradicted by any other evidence in the case. They were consistently reiterated by petitioner on several occasions after his first exposition of them.

Not only is the independent evidence of guilt here overwhelming, as in *Harrington*, but the allegedly inadmissible statements of Snell at most tended to corroborate certain details of petitioner's comprehensive confession. True, under the judge's charge, the jury might have found the confession involuntary and therefore inadmissible. But this argument proves too much; without Schneble's confession and the resulting discovery of the body, the State's case against Schneble was virtually nonexistent. The remaining evidence in the case—the disappearance of Mrs. Collier sometime during the trip, and Snell's statement that Schneble sat in the back seat of the car during the trip and never left Snell alone with Mrs. Collier—could not by itself convict Schneble of this or any other crime. Charged as they were by the judge that they must be "satisfied beyond a reasonable doubt" and "to a moral certainty" of Schneble's guilt before they could convict him, the jurors could on no rational hypothesis have found Schneble guilty without reliance on his confession. Judicious ap-

plication of the harmless-error rule does not require that we indulge assumptions of irrational jury behavior when a perfectly rational explanation for the jury's verdict, completely consistent with the judge's instructions, stares us in the face. See *Rogers* v. *Missouri Pacific R. Co.*, 352 U. S. 500, 504–505 (1957).

Having concluded that petitioner's confession was considered by the jury, we must determine on the basis of "our own reading of the record and on what seems to us to have been the probable impact . . . on the minds of an average jury," *Harrington* v. *California*, *supra*, at 254, whether Snell's admissions were sufficiently prejudicial to petitioner as to require reversal. In *Bruton*, the Court pointed out that "[a] defendant is entitled to a fair trial but not a perfect one." 391 U. S., at 135, quoting *Lutwak* v. *United States*, 344 U. S. 604, 619 (1953). Thus, unless there is a reasonable possibility that the improperly admitted evidence contributed to the conviction, reversal is not required. See *Chapman* v. *California*, 386 U. S. 18, 24 (1967). In this case, we conclude that the "minds of an average jury" would not have found the State's case significantly less persuasive had the testimony as to Snell's admissions been excluded. The admission into evidence of these statements, therefore, was at most harmless error.

Affirmed.

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN join, dissenting.

This is a capital case in which the petitioner was convicted of murder. When the case was last before us, we vacated the conviction and remanded for further consideration in light of *Bruton* v. *United States*, 391 U. S. 123 (1968). See *Schneble* v. *Florida*, 392 U. S. 298 (1968). On remand, the Supreme Court of Florida reaffirmed

the conviction, holding that it was not "inconsistent with Bruton." While *Bruton* itself received an extensive factual analysis by the State Supreme Court, little attention was paid to the facts of the instant case and no reasons were proffered in support of the holding that *Bruton* was not violated. In today's opinion the Court rejects the Florida Supreme Court's conclusion that this case can be squared with *Bruton* and concludes that *Bruton* was violated when the statement of a nontestifying codefendant implicating petitioner in the crime charged was introduced at trial. Yet, the conviction is permitted to stand because the *Bruton* violation is viewed as "harmless error" within the meaning of *Chapman* v. *California*, 386 U. S. 18, 24 (1967). I dissent.

Determining whether or not a constitutional infirmity at trial is harmless error is ordinarily a difficult task. This case is easier than most, because it is impossible to read the record and to conclude that the evidence so "overwhelmingly" establishes petitioner's guilt that the admission of the codefendant's statement made no difference to the outcome.

The Court relies on *Harrington* v. *California*, 395 U. S. 250 (1969), to support its conclusion, but that case is inapposite. In *Harrington*, the Court found harmless error where statements of two nontestifying codefendants were introduced at trial to demonstrate Harrington's presence at the scene of the crime. That decision was limited to a factual setting in which the defendant admits being at the scene, and the improperly admitted statements of the codefendants are merely cumulative evidence. I most urgently protest the extension of that case to these facts.

It is true that prior to trial petitioner confessed to murdering the victim. But, it is also true that when he was first arrested, petitioner denied his guilt and

placed the full blame on his codefendant. He also denied being present when the murder was committed. Only after he was subjected to a series of bizarre acts by the police designed to frighten him into making incriminating statements did petitioner "confess." The full spectrum of events leading up to the confession is set out in detail in the first opinion of the Supreme Court of Florida, 201 So. 2d 881, 884–885 (1967).

Petitioner moved to suppress the statements that he made to the police on the ground that they were the direct result of police coercion. Recognizing that the police acted improperly in attempting to obtain a statement from Schneble, the Florida Supreme Court upheld the trial court's finding that the incriminating statements were made in circumstances sufficiently attenuated from the coercive activities as to remove the taint. Our limited grant of certiorari does not permit review of this ruling. But, the limited nature of the grant does not bar us from looking at the entire record in the case in order to dispose of the one issue presented.

Before the trial judge permitted the jury to hear testimony regarding petitioner's incriminating statements, he made the initial determination that those statements were voluntary as required by *Jackson* v. *Denno*, 378 U. S. 368 (1964). He subsequently instructed the jury in the following manner:

> "Should you find from the evidence that any alleged statement or confession as to any defendant was not freely and voluntarily made, or if you have a reasonable doubt in this regard, then you must disregard the same, as well as any other item of evidence that may have been discovered by the State by reason of such alleged statement of [*sic*] confession." (Tr. 561.)

We have no way of knowing what judgment the jury made with respect to the voluntariness of petitioner's

statements. In my opinion, there is clearly enough evidence to support either a finding of voluntariness or one of coercion. Since an error cannot be harmless if there is a reasonable possibility that it contributed to a finding of guilt, all reasonable inferences that might be drawn from the evidence must be drawn in favor of the defendant, since the jury may very well have made just these inferences. Thus, we can assume that the jury found petitioner's incriminating statements to be involuntary.

We must also assume that the jury followed the instructions of the court and disregarded not only the statements themselves, but all the evidence "that may have been discovered by the State by reason of such . . . statement[s] . . . ." It is possible that the jury may have found the statements to be involuntary and still relied on them. See *Jackson* v. *Denno, supra.* But, it is by no means certain that the jury did not meticulously follow the instructions of the trial judge. See *Lego* v. *Twomey,* 404 U. S. 477 (1972). Since either assumption may be made, we must again choose the assumption favorable to the defendant in order to insure that any error was harmless.

Assuming, then, that the jury completely disregarded petitioner's incriminating statements and all evidence derived therefrom, little evidence remains to support the verdict. Only the statement of the codefendant places petitioner at the scene of the crime at the relevant time. Without this statement, it is difficult to believe that anyone could be convinced of petitioner's guilt beyond a reasonable doubt.

The Court asserts, however, that "we must determine on the basis of 'our own reading of the record and on what seems to us to have been the probable impact . . . on the minds of an average jury,' . . . whether Snell's [the codefendant's] admissions were sufficiently

prejudicial to petitioner as to require reversal." The Court concludes that "the 'minds of an average jury' would not have found the State's case significantly less persuasive had the testimony as to Snell's admissions been excluded."

The mistake the Court makes is in assuming that the jury accepted as true all of the other evidence. The case turns on this assumption, and as demonstrated above, it is clearly erroneous. The jury was given the duty of making an independent determination of the admissibility of petitioner's incriminating statements and their fruits. In light of the evidence with respect to coercive police activities, we cannot say with even a minimal degree of certainty that the jury did not find the statements involuntary and that it did not choose to disregard them and almost all of the other evidence in the case which was derived from those statements. We also cannot be certain that the jury did not base its verdict primarily on the statement of the codefendant. See *Malinski* v. *New York*, 324 U. S. 401, 404 (1945); cf. *Rogers* v. *Richmond*, 365 U. S. 534 (1961) (Frankfurter, J.).

The Court would assume that the jury must have found petitioner's statements to be voluntary and therefore admissible along with their fruits, because the other evidence was insufficient to support a conviction. This assumption is erroneous for several reasons. First, the jury may have found that some of petitioner's statements were involuntary and some were voluntary. The "voluntary" statements may have been connected with the codefendant's statement to support the conviction, while standing alone they may have been insufficient to support a guilty verdict. Second, the jury may have found that the statements were all involuntary but that some evidence remained free from any taint. Whereas the Court indicates that if the statements were involun-

tary, then all the other evidence in the case except the codefendant's statement must be suppressed as a matter of law, the jury was given only a general instruction on suppression and may, incorrectly and unwittingly, have more narrowly circumscribed the taint. The codefendant's statement bolstered any other evidence considered by the jury. Third, the jury may have found the statements to be involuntary and ignored all the evidence that the Court says should have been ignored. The jury may then have convicted on insufficient circumstantial evidence, including the codefendant's statement. We need ascribe no malevolence here; we need only recognize that humans err. Indeed, the very notion of "harmless error" should constantly remind us of that.* Any one of these things is a reasonable possibility, and despite the apparent certainty with which the Court affirms the decision below, there remains a deep and haunting doubt as to whether a constitutional violation contributed to the conviction.

In light of these uncertainties I find it impossible to perceive how the Court can conclude that the violation of *Bruton* was harmless error. It is significant that the Florida Supreme Court did not find harmless error in this case. Unless the Court intends to emasculate *Bruton*, *supra*, or to overrule *Chapman* v. *California*, *supra*, *sub silentio*, then I submit that its decision is clearly wrong.

Rogers v. *Missouri Pacific R. Co.*, 352 U. S. 500 (1957), cited by the Court to support the proposition that we do not lightly infer irrational jury behavior had nothing whatever to do with a criminal case generally or with "harmless error" in particular. That case dealt with the proper function of judge and jury in Federal Employers' Liability Act cases. It never considered whether reversal was required when evidence was admitted in violation of the Constitution. *Rogers* was, in short, a case involving the sufficiency of the evidence. In such cases we draw precisely the opposite inferences as drawn in "harmless error" cases.